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09/730,592	12/07/2000	James Michael Fitzpatrick	PIP-53-FITZ-US	9232
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NEIFELD IP LAW, PC 4813-B EISENHOWER AVENUE ALEXANDRIA, VA 22304				
EXAMINER AKINTOLA, OLABODE				
ART UNIT		PAPER NUMBER		
3691				
NOTIFICATION DATE		DELIVERY MODE		
06/26/2009		ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte JAMES MICHAEL FITZPATRICK

Application No. 09/730,592
Technology Center 3600

Mailed: June 25, 2009

Before DALE M. SHAW, *Chief Appeals Administrator*.
SHAW, *Deputy Chief Appeals Administrator*.

ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER

This application was electronically received by the Board of Patent Appeals and Interferences on December 12, 2008. A review of the application revealed that it is not ready for docketing as an appeal. Accordingly, the application is herewith being returned to the Examiner to address the following matter requiring attention prior to docketing.

APPEAL BRIEF, APPEALED CLAIMS

Appellant has not appealed all rejected claims. Specifically, a review of the “Status of Claims” appearing on page 1 of the Appeal Brief filed August 26, 2008, finds that claims 1-55 are rejected. The rejected claims that have not been appealed are claims 1-4, 24-27, 40-49, 53 and 54.

DISCUSSION

The Board of Appeals and Interferences (Board), in *Ex parte Ghuman*, <http://www.uspto.gov/web/offices/dcom/bpai/prec/rm081175.pdf> (BPAI May 14, 2008) (precedential), held that in appeals where rejected claims are expressly withdrawn, or are implicitly withdrawn by not presenting arguments in support of patentability, the Board will remand (or return) the application to the Examiner with instructions to cancel the expressly or implicitly withdrawn claims. *See also Manual of Patent Examining Procedure* (MPEP) § 1215.03 (8th ed. Rev. 7, Sept 2008).

CONCLUSION

Accordingly, it is ORDERED that the application is returned to the Examiner:

1) to either enter or have appellant enter a paper canceling claims 1-4, 24-27, 40-49, 53 and 54, and to make at least one or all of the dependant claims 5-23, 28-39, 50-52 and 55 independent;

2) upon entry of the paper, to return the application to the Board for consideration of the appealed claims; and

3) for such further action as may be appropriate.

If there are any questions pertaining to this Order, please contact the Board of Patent Appeals and Interferences at 571-272-9797.

DMS:psb

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